

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JERRY L. HANSEN, and STEVEN)
M. JACOB,)

4:07CV3086

)
)
)
Plaintiffs,)

)
v.)

**MEMORANDUM
AND ORDER**

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)
SAM SHAW, et al.,)

)
)
Defendants.)

This matter is before the court on Plaintiff Steven M. Jacob's Notice of Appeal (filing no. 32) and Motion for Leave to Appeal In Forma Pauperis (filing no. 33).

In his Notice of Appeal, Plaintiff seeks to appeal the court's December 18, 2007 and March 12, 2008 Orders. (Filing Nos. 19 and 30.) However, neither of these Orders are final orders, and judgment has not been entered in this matter.¹ Plaintiff's Notice of Appeal is therefore construed as a motion for interlocutory appeal. As set forth in 28 U.S.C. § 1292(b), an interlocutory appeal is warranted if the decision sought to be appealed involves a controlling question of law as to which substantial grounds for difference of opinion exist, so that an immediate appeal could materially advance the ultimate termination of this litigation. 28 U.S.C. §1292(b).

Here, no such "controlling question of law" is implicated. The court's December 18, 2007 and March 12, 2008 Orders do not involve controlling questions

¹Although the court has dismissed some, but not all, claims from this action, a judgment under Federal Rule of Civil Procedure 54(b) is not appropriate here. The dismissed claims and the pending claims have a common factual background and allowing one appeal to go forward while this case progresses is not in the interest of judicial economy.

of law as to which there is substantial ground for difference of opinion, and an immediate appeal would not materially advance the ultimate termination of this litigation. Therefore, there is no reason why the present appeal should proceed prior to entry of a final judgment in this matter. For these reasons, Plaintiff Steven M. Jacob's Notice of Appeal, construed as a motion for interlocutory appeal, is denied and Plaintiff's Motion for Leave to Proceed IFP on Appeal is denied as moot.

IT IS THEREFORE ORDERED that:

1. Plaintiff Steven M. Jacob's Notice of Appeal (filing no. 32), construed as a motion for interlocutory appeal, is denied.

2. Plaintiff Steven M. Jacob's Motion for Leave to Appeal In Forma Pauperis (filing no. 33) is denied as moot.

April 28, 2008.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge